

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN DEAN THURLOW,)
)
Petitioner,)
) 1:16CV385
v.) 1:16CV883
) 1:16CV521
) 1:11CR48-1
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

Before the court are several civil cases arising from the same criminal case. In an effort to clarify the record particularly for the benefit of Petitioner, the court enters the following Order.

Petitioner filed a motion to vacate, set aside, or correct sentence, which was assigned civil case number 1:16CV385. (Doc. 122.)¹ Because the motion was not on the forms required by this district for processing such claims, the Magistrate Judge entered an Order and Recommendation to dismiss the motion without prejudice to Petitioner filing a corrected motion on the proper forms. (Doc. 123).

Petitioner initially moved for more time to object to the Recommendation, but then he filed a correct motion on the proper

¹ All citations are to the docket in case 1:11cr48-1.

forms. (Doc. 130.) This action was assigned a new civil case number: 1:16CV521.

Petitioner then filed a motion to voluntarily dismiss his complaint in case number 1:16CV385. (Doc. 134.)

On June 22, 2016, Petitioner filed a "habeas corpus petition" under 28 U.S.C. § 2241, which was assigned a new civil action number 1:16CV883. The Magistrate Judge treated the petition as a motion for relief under 28 U.S.C. § 2255 and entered an Order and Recommendation to dismiss it without prejudice to Petitioner pursuing the same claim in case number 1:16CV521. (Doc. 6 in case number 1:16CV883.)

Thereafter, the Magistrate Judge issued a Memorandum Opinion and Recommendation on July 8, 2016, granting Petitioner's request (Doc. 134) to withdraw his motions to vacate, set aside or correct sentence (Docs. 122, 130), but cautioning that by doing so Petitioner's claims may be time-barred upon re-filing. (Doc. 135 n.1.) The Magistrate Judge therefore advised Petitioner to notify the court before the expiration of the time for filing objections if he wished to change his mind and to proceed with his motions. (Id.)

The Government then moved to hold case number 1:16CV521 in abeyance pending the decision of the Fourth Circuit in United

States v. Hassan Sharif Ali (4th Cir. Docket No. 15-4433). (Doc. 141.)

Petitioner thereafter filed a notice on July 25, 2016, in which he states that he has changed his mind and now wishes to withdraw his prior motion to withdraw his motions to vacate (Doc. 134); Petitioner also seeks the appointment of counsel. (Doc. 142 at 1.)

Petitioner has also filed a notice, joining in the Government's request to stay proceedings (Doc. 141). (Doc. 143.)

Despite the Government's request to hold case number 1:16CV521 in abeyance, the Government then filed a motion to dismiss the motions to vacate. (Doc. 149.) Petitioner, through appointed counsel, has sought an extension of time to respond to that filing (Doc. 155), but Petitioner has filed a pro se response (Doc. 156).

On November 8, 2016, Chief Judge William L. Osteen, Jr., entered an Order, which was docketed November 15, 2016, staying the case pending the decision of the Supreme Court in Dimaya v. Lynch, 803 F.3d 1110 (9th Cir. 2015), cert. granted, No. 15-1498.²

In light of the state of the current record, therefore,

² It also appears that on October 4, 2016, the Fourth Circuit also entered an Order placing United States v. Hassan Sharif Ali in abeyance pending the Supreme Court's decision in Dimaya v. Lynch.

1. Per the Order of the Chief Judge, case number 1:16CV521 remains STAYED pending the decision of the Supreme Court in Dimaya v. Lynch. The court also GRANTS the Government's motion (Doc. 141) and this case will further be STAYED pending a decision of the Fourth Circuit in United States v. Hassan Sharif Ali. The Government shall notify the court when the Supreme Court issues its ruling in Dimaya v. Lynch as well as when the Fourth Circuit issues its decision in United States v. Hassan Sharif Ali and provide at least quarterly updates to this court.

2. Petitioner's request to withdraw (Doc. 143) his motion to withdraw (Doc. 134) is GRANTED and the motion to withdraw (Doc. 134) is deemed withdrawn. Petitioner has preserved his right to proceed on his motion to vacate, set aside, or correct sentence (Docs. 122, 130). The Recommendation of the Magistrate Judge in case numbers 1:16CV385 and 1:16CV521 (Doc. 135) is therefore deemed MOOT, and Petitioner need not file any objections.

3. The court will ADOPT the Recommendation in case number 1:16CV883 (Doc. 6 in case number 1:16CV883), and Petitioner's motion in that case, which is duplicative of his motion in case number 1:16CV521, will be DISMISSED without prejudice to Petitioner pursuing the same claims in case number 1:16CV521. Because Petitioner has filed his motion in case number 1:16CV521

on the proper forms, the court will ADOPT the Recommendation in case number 1:16CV385 to dismiss the motion without prejudice to Petitioner filing a corrected motion on the proper forms. (Doc. 123).

4. Petitioner's request for appointment of counsel is MOOT, now that the Federal Public Defender has been appointed for purposes of pursuing any claim under Johnson v. United States, 125 S. Ct. 2551 (2016).

SO ORDERED.

/s/ Thomas D. Schroeder
United States District Judge

November 29, 2016